



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2015-0247; FRL-9932-23-Region 4]**

#### **Approval and Promulgation of Implementation Plans; Mississippi; Memphis, TN-MS-AR**

#### **Emissions Statements for the 2008 8-Hour Ozone Standard**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a draft state implementation plan (SIP) revision submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) on June 1, 2015, for parallel processing, to address the emissions statement requirements for the State's portion of the Memphis, Tennessee-Mississippi-Arkansas (Memphis, TN-MS-AR) 2008 8-hour ozone national ambient air quality standards (NAAQS) nonattainment area (hereafter referred to as the "Memphis, TN-MS-AR Area" or "Area"). Annual emissions reporting (i.e., emissions statements) is required for all ozone nonattainment areas. The Area is comprised of Shelby County in Tennessee, Crittenden County in Arkansas, and a portion of DeSoto County in Mississippi. In a separate action, EPA approved Tennessee's regulations addressing emissions statements for its portion of the Memphis, TN-MS-AR Area. EPA will consider and take action on the emissions statements requirements for the Arkansas portion of this Area in a separate action. This proposed action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0247, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [R4-ARMS@epa.gov](mailto:R4-ARMS@epa.gov).
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2015-0247," Air Regulatory Management Section (formerly Regulatory Development Section), Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Air Regulatory Management Section (formerly Regulatory Development Section), Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2015-0247. EPA's policy is that all comments received will be included in the public docket without change and

may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information may not be publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection

Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bell can be reached at (404) 562-9088 and via electronic mail at [bell.tiereny@epa.gov](mailto:bell.tiereny@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. What is Parallel Processing?**

Consistent with EPA regulations found at 40 CFR part 51, appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the Federal Register during the same time frame that the state is holding its public process. The state and EPA then provide for concurrent public comment periods on both the state action and federal action.

If the revision that is finally adopted and submitted by the State is changed in aspects other than those identified in the proposed rulemaking on the parallel process submission, EPA

will evaluate those changes and if necessary and appropriate, issue another notice of proposed rulemaking. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On June 1, 2015, the State of Mississippi, through MDEQ, submitted a formal letter request for parallel processing of a draft SIP revision that the State had already taken through public comment. The letter also contains a schedule for final adoption of the draft SIP revision. MDEQ requested parallel processing so that EPA could begin to take action on its draft SIP revision in advance of the State's submission of the final SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) adopted by Mississippi, (2) submitted formally to EPA for incorporation into the SIP; and (3) evaluated by EPA, including any changes made by the State after the June 1, 2015, draft was submitted to EPA.

## **II. Background**

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Memphis, TN-MS-AR Area was designated nonattainment for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the Memphis, TN-MS-AR Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. On March 6, 2015, EPA finalized a rule entitled “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS.<sup>1</sup> *See* 80 FR 12264. This rule establishes nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA, including an attainment date three years after the July 20, 2012, effective date, for areas classified as marginal for the 2008 8-hour ozone NAAQS. Therefore, the attainment date for the Memphis, TN-MS-AR Area is July 20, 2015.

Based on the nonattainment designation, Mississippi is required to develop a nonattainment SIP revision addressing certain CAA requirements. Specifically, pursuant to CAA section 182(a)(3)(B), Mississippi is required to submit a SIP revision addressing emissions statements requirements.

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<sup>1</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

Ground level ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO<sub>x</sub> and VOC. Section 182(a)(3)(B) of the CAA requires each state with ozone nonattainment areas to submit a SIP revision requiring annual emissions statements to be submitted to the state by the owner or operator of each NO<sub>x</sub> or VOC stationary source<sup>2</sup> located within a nonattainment area showing the actual emissions of NO<sub>x</sub> and VOC from that source. The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

On June 1, 2015, Mississippi submitted a draft SIP revision, for parallel processing, containing an emissions statements requirement related to its portion of the Memphis, TN-MS-AR Area.<sup>3</sup> EPA is now proposing to approve this draft SIP revision as meeting the requirements of section 182(a)(3)(B) of the CAA. More information on EPA's analysis of Mississippi's draft SIP revision is provided below.

### **III. Analysis of State's Submittal**

Mississippi's June 1, 2015, draft submission seeks to include 11 Mississippi Administrative Code (MAC), Part 2, Chapter 11, "Regulations for Ambient Air Quality Non-Attainment Areas," into its SIP to meet the emissions statements requirement of the CAA section

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<sup>2</sup> A state may waive the emissions statements requirement for any class or category of stationary sources which emit less than 25 tons per year of VOCs or NO<sub>x</sub> if the state meets the requirements of section 182(a)(3)(B)(ii).

<sup>3</sup> Mississippi originally submitted a rule to address the 2008 8-hour ozone standard in a January 14, 2015, SIP revision. However, the State subsequently revised its rule to more fully address the requirements of section 182(a)(3)(B) and submitted the draft revised rule to EPA in a June 1, 2015, draft SIP submission for parallel processing. The June 1, 2015, draft SIP submission supersedes the January 14, 2015, submission.

182(a)(3)(B).<sup>4</sup> This new state regulation addresses the emissions statements requirement and is applicable to sources in the portion of DeSoto County, Mississippi, that is located within the Area. The June 1, 2015, draft SIP submittal adds Rule 11.1 - *General*, which states the purpose of the regulation; Rule 11.2 - *Definitions*, which defines Commission, Department, NAAQS, Nonattainment Area and Emissions Statement; and Rule - 11.3 *Emissions Statement*, which: (1) applies to all stationary sources of NO<sub>x</sub> or VOCs which have the potential to emit 25 tons or more of either pollutant per calendar year and are located in areas designated as nonattainment for the 2008 ozone NAAQS; (2) requires owners and operators of those stationary sources of NO<sub>x</sub> and VOC to provide a statement showing the actual emissions of NO<sub>x</sub> and VOCs from that source; and (3) requires that emissions statements be submitted to MDEQ by July 1 of every year, showing actual emissions of the previous calendar year and containing a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. EPA has determined that this regulation meets all of the requirements of CAA section 182(a)(3)(B) for the Mississippi portion of the Area because it covers the portion of DeSoto County within the Area and satisfies the applicability, certification, and other emissions statements criteria contained therein.

#### **IV. Incorporation by Reference**

In this proposed rule, EPA is proposing to finalize regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to finalize the incorporate by reference of 11-MAC-Part 2-Chapter 11 entitled “Regulations for Ambient Air Quality Non-Attainment Areas.” EPA has made, and will continue to make, these

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<sup>4</sup> This regulation conforms to the new nomenclature for Mississippi’s state regulations pursuant to the State’s recently amended Administrative Procedures Act. Mississippi has not provided EPA with a SIP revision to renumber the state regulations currently incorporated into the SIP.



documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the Region 4 EPA office (see the ADDRESSES section of this preamble for more information).

## **V. Proposed Action**

EPA is proposing to approve the draft SIP revision submitted by Mississippi on June 1, 2015, to incorporate 11 MAC, Part 2, Chapter 11, “Regulations for Ambient Air Quality Non-Attainment Areas,” into its SIP to meet the section 182(a)(3)(B) emissions statements requirement for the Mississippi portion of the Memphis, TN-MS-AR Area. EPA has preliminarily concluded that the State’s submission meets the requirements of sections 110 and 182 of the CAA.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on

tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 30, 2015.

Heather McTeer Toney,

Regional Administrator,

Region 4.

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am; Publication Date: 8/10/2015]